

MHND010010082022



***IN THE COURT OF PRINCIPAL DISTRICT JUDGE, NANDED.
(Presided over by Nagesh V. Nhavkar)***

Civil M.A.No.183/2022.

The Project Director, NHAI-PIU, Nanded

Versus

Md. Salim S/o. Sk. Husen through his LRs and others..

ORDER BELOW EXHIBIT NO.19/1

1] This is an application under Section 9 of The Arbitration and Conciliation Act, 1996 for interim measures. The main application vide Civil M. A.183/2022 is under Section 34 of The Arbitration and Conciliation Act, 1996 for setting aside the Arbitral Award dated 27/01/2022 passed by Arbitrator/Collector, Nanded in Arbitration Application No.CR-730/2021.

2] The brief facts are stated as follows:-

The respondent No.1 through his LRs is land owner and possessor of the land Gut No.638 at village Ardhapur, Tq. Ardhapur Dist. Nanded, out of which 1700 Sq. Mtrs. Land has been acquired for widening of existing bypass of Ardhapur i.e. National Highway No.361. The infrastructure project taken up by the present applicant under the National Highways Act, 1956.

3] The respondent No.2 is a Competent Authority for Land Acquisition (Hereinafter referred as "CALA") appointed by the Central Government vide Section 3-A of National Highways Act,

1956 to perform the function of determination of compensation of the acquired lands. The respondent No.3 is a sole Arbitrator and Additional District Collector, Nanded, established under the National Highways Act, 1956. The due process followed for acquisition of land is as per Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

4] It is applicant's case that, while determining the market rate of acquired land, the Competent Authority for Land Acquisition (CALA) has not followed the guidelines issued by the Appropriate Government. The Learned Advocate for the applicant submits that, the land acquired is in the Urban area; whereas CALA applied wrong manner of determination of value by considering the multiplier of Two being applicable to Rural area. It is argued that, the same was raised before the Arbitrator vide it failed to follow the guidelines of the said is being contested in the main application.

5] The Learned Advocate for the applicant submits that, the application *vide* Exh.19/1 is preferred on the ground that, during pendency of this contested issue the infrastructure project is being delayed causing loss to the applicant Authority. Therefore, prayed for interim measures for direction to respondent Nos.1 and 2 for handing over the possession of the acquired land to NHAI for Construction of National Highway No.361, subject to condition of depositing 50% of the amount in the Court with liberty for respondent No.1 through his LRs to withdraw the same.

6] The Learned Advocate for the respondent No.1 through his LRs resisted the main application on various grounds of justifiable multiplier applied by respondent Nos.2 and 3 while passing the Award. Advocate for respondent No.1 through his LRs submits say at Exh.37. He prayed for 100% of the amount of the award to be deposited by the applicant. The Advocate for respondent No.1 through his LRs further submits that it would be acceptable to his client to the tune of deposit of 50% amount if order passed as an interim measures.

7] Section 9 of The Arbitration and Conciliation Act, 1996 empowers this Court to pass Orders as interim measures at any time after making of the Arbitral Award; but before it is enforced in accordance with Section 36 of The Arbitration and Conciliation Act, 1996. Admittedly, the Arbitral Award in question is not yet enforced.

8] Considering arguments advanced from both sides, following points arise for my determination and I have recorded my findings thereon for the reasons stated below:-

<i>Sr.No.</i>	<i>POINTS</i>	<i>FINDINGS</i>
1	Whether direction to respondent Nos.1 and 2 to handover possession of the acquired land subject to deposit of 50% amount of the Arbitral Award pending final decision of the application under Section 34 of The Arbitration and Conciliation Act, 1996 would be legal and proper?	Yes.
2	What order ?	As per final order.

REASONS

9] **As to Point No.1:-**

The Learned Advocate for the applicant submits the Judgment in case of **NHAI Vs. Shital Jaidev Vade & Ors. In Civil Appeal No.5256 of 2022**, wherein it is observed in P-7.1 as follows:-

7.1 In view of the above discussion, we would have set aside the impugned judgment and order passed by the High Court on the aforesaid ground alone. However, taking into consideration the similar order passed by this Court in the case of Saraswatibai Chandrakant Shinde (supra), we deem it appropriate to dispose of the present proceedings/appeal with the following directions :

(i) The NHAI shall deposit 50 per cent of the compensation amount, as awarded by the Arbitral Court, with the Executing Court within a period of four weeks. The said amount shall be released to the land owners unconditionally.

(ii) The learned District Court, before whom the proceedings under Section 34 of the Arbitration Act are pending, shall make an endeavour to decide such proceedings within a period of six months from the next date of hearing before the said court.

(iii) The balance amount of compensation as per the Award to be passed under Section 34 of the Arbitration Act, shall be deposited by the NHAI with the Executing Court within four weeks after such determination. The said amount shall also be released by the Executing Court in favour of the land owners subject to the rights and remedies available to the parties in law.

10] The advocate for respondent No.1 through his LRs in his say claims 100% amount at the time of passing order of interim measures. However, oral submission reveals to his clients acceptance of 50% of the amount if directed by this court as an interim measures. It appears that the submission in writing is to the extent of challenge to the main application. The same can be decided only

upon the decision of the main application. However, during pendency of the main application, it is necessary to pass an order for interim measures as this being a public infrastructure project to avoid further delay from getting the compensation to the land looser. It would be appropriate to consider the prayer of the applicant and respondent No.1 through his LR's both to strike balance between them.

11] The Learned Advocate for applicant further relied upon the Judgment of Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in **Writ Petition No.5307 of 2021 Sumanbai Kaduba Magare and Ors Vs. The State of Maharashtra**, observed in P-6 as follows:-

6. In order to avoid a second round of litigation and save these litigating parties of further rigours of litigation, we direct that these petitioners would be at liberty to withdraw 50% of the amount as would be deposited by the Highways Authority with the competent authority, by tendering individual undertakings duly identified by their advocates, declaring that if an adverse order is delivered by the Arbitrator, the excess amounts that may have been received by these petitioners, would be paid back within one month to the Highways Authority.

12] The view taken by the Hon'ble Supreme Court needs to be followed while deciding this application vide Exh.19/1. It is public infrastructure project taken up by the applicant. To avoid the loss being caused to either side due to the lapse of time, it would be appropriate to pass an Order for interim measures under Section 9 of The Arbitration and Conciliation Act, 1996. Therefore, following order is passed :-

ORDER

- 1] The application vide Exh.19/1 is allowed with certain conditions as follows:-
- a] The respondent Nos.1 and 2 are directed to handover the possession of acquired land to the applicant for construction of National Highways No.361 within 2 weeks after the applicant deposits in this Court 50% of the compensation amount alongwith interest @ 9.00% P. A. from the date of CALA Order.
- b] The respondent No.1 through his LRs would be at liberty to withdraw such amount deposited thereafter by a day application to this Court.

Date: 01/02/2024

Sd/-
(Nagesh V. Nhavkar)
Principal District Judge,
Nanded.

Certificate

I affirm that the contents of this P.D.F. file Judgment are same word to word, as per the original judgment.

Name of Stenographer	:- Pornima V. Jadhav Stenographer Grade I
Court name	:- Principal District Judge Court, Nanded.
Date	:- 01.02.2024
Judgment signed by	
Presiding officer on	:- 01.02.2024
Judgment uploaded on	:- 01.02.2024

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